

HOUSE BILL 3962  
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 71,  
and to enact the "Fair Share Health Care Fund  
Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as, the "Fair Share Health Care Fund Act".

SECTION 2. Tennessee Code Annotated, Title 71, is amended by adding Sections 3 through 8 as a new, appropriately designated chapter thereto.

SECTION 3. As used in this chapter, unless the context otherwise requires:

- (1) "Fund" means the fair share health care fund created by this chapter;
- (2) "Employee" means any individual employed full time or part time directly by an employer;
- (3) "Employer" means any person doing business in Tennessee, as that phrase is defined in § 67-4-2004(9), except that the term "employer" does not include the federal government, the state, any other state, or any political subdivision of the state or any other state. For purposes of this chapter, "employer" includes only those employers with ten thousand (10,000) or more employees in this state;
- (4) "Health insurance costs" means the amount paid by an employer to provide health care or health insurance to employees in this state to the extent that the costs may be deductible by the employer under federal tax law. "Health insurance costs" includes payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits as defined in 26 USC § 213(d), as it may be amended from time to time; and

(5) "Commissioner" means the commissioner of finance and administration.

#### SECTION 4.

(a) There is hereby created in the state treasury a fund to be known as the "fair share health care fund." Moneys shall be deposited to the fund as provided by law and shall be invested for the benefit of the fund pursuant to § 9-4-603. Moneys in the fund shall not revert to the general fund of the state, but shall remain available and be appropriated exclusively for supporting the operations of the state TennCare program and other medicaid programs, and specifically to fund programs that assist in financing health insurance coverage for uninsured workers forced to rely on TennCare or another medicaid program because their employer does not provide adequate health insurance coverage. The fund may be used only in ways that support this stated purpose.

(b) The fund consists of any revenue received from payments made by employers pursuant to this chapter and any other moneys from any other source accepted for the benefit of the fund.

#### SECTION 5.

(a) On January 1, 2007, and annually thereafter, each employer shall submit to the commissioner the following information, in such a manner as the commissioner may require:

(1) The number of employees of the employer in the state as of January 1 of the previous year;

(2) The amount spent by the employer in the previous calendar year on health insurance costs for employees in this state; and

(3) The percentage of payroll that was spent by the employer in the previous calendar year on health insurance costs for employees in this state.

(b) The commissioner shall adopt regulations that specify the information that employers shall submit pursuant to this section and any other pertinent information required by the commissioner, and the form and manner for submitting that information. The information submitted by each employer shall be signed by the principal executive officer of the employer or an individual performing a similar function, and shall include an affidavit under penalty of perjury that the information was reviewed by the signing officer, is based on the officer's knowledge, does not contain any untrue statement of a material fact or omit a material fact necessary to make the statement not misleading, and is true to the best of the signing officer's knowledge, information and belief.

(c) When calculating the percentage of payroll or the amount spent on healthcare pursuant to subsection (a), an employer may exempt wages and salaries paid to an employee who is enrolled in or eligible for medicare.

#### SECTION 6.

(a) An employer that is organized as a nonprofit organization that does not spend at least six percent (6%) of its total payroll for employees in this state on health insurance costs shall pay to the commissioner an amount equal to the difference between six percent (6%) of that employer's total payroll for employees in this state and the actual amount spent by that employer in the previous calendar year for health insurance costs for employees in this state. The commissioner shall deposit any amount received pursuant to this section in the fund.

(b) An employer that is organized as a for-profit organization that does not spend at least eight percent (8%) of its total payroll for employees in this state on health insurance costs shall pay to the commissioner an amount equal to the difference between eight percent (8%) of that employer's total payroll for employees in this state and the actual amount spent by that employer in the previous calendar year for health

insurance costs for employees in this state. The commissioner shall deposit any amount received pursuant to this section in the fund.

(c) An employer may not deduct any payment made pursuant to this section from the wages of any employee.

(d) The commissioner may accept the payment required from an employer pursuant to this section in the form of periodic payments in the commissioner's discretion.

SECTION 7. The commissioner may assess a civil penalty against any person not to exceed two hundred fifty dollars (\$250) per day for each day that a report required by this chapter is not timely filed or fifty thousand dollars (\$50,000) for failure to make a required payment to the commissioner in violation of this chapter. Any hearing on the imposition of a civil penalty pursuant to the provisions of this section shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. On or before March 15 of each year, the commissioner shall report to the governor and to the general assembly the following information:

(1) The name of each employer with ten thousand (10,000) or more employees in the state;

(2) The employer's definition of full-time and part-time employee;

(3) The number of full-time and part-time employees;

(4) The number of full-time and part-time employees eligible to receive health insurance benefits;

(5) The number of full-time and part-time employees receiving health insurance benefits from the employer; and

(6) The source of health insurance benefits for those eligible full-time and part-time employees not receiving health insurance benefits through an employer subject to reporting pursuant to this chapter.

SECTION 9. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.